SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 657

CHARLES F. AMIDON

vs.

THE UNITED STATES

ON CERTIFICATE FROM THE COURT OF CLAIMS

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[fol. 1]

IN COURT OF CLAIMS OF THE UNITED STATES

No. 42541

CHARLES F. AMIDON

vs.

THE UNITED STATES

Statement of Facts and Certificate

Mr. John S. Flannery appeared for the plaintiff.

Messrs. Frank J. Wideman and Alexander Holtzoff appeared for the defendant.

Before Chief Justice Booth, Judge Green, Judge Littleton, Judge Williams, and Judge Whaley.

STATEMENT OF FACTS

The Court of Claims hereby certifies that the record of the above-entitled case now pending before it discloses the following:

Plaintiff, Charles F. Amidon, duly filed his petition in the Court of Claims on the 7th day of November 1933, in which he asks judgment against the United States in the sum of $558.34 as salary due him for the months of June to October, 1933, inclusive, all of which will more particularly appear from his petition, a copy of which accompanies this certificate and is marked "Exhibit A."

The petition of plaintiff, among other things, alleges:

That on February 18, 1897, he was appointed by the President of the United States to be Judge of the United States District Court for the District of North Dakota, by and with the advice and consent of the Senate, and on [fol. 2] February 27, 1897, duly qualified, and ever since that date has been engaged in the performance of his duties as Judge of the United States District Court for the District of North Dakota.

That he attained the age of seventy years on August 17, 1926, and on June 2, 1928, retired, pursuant to the provisions of section 260 of the Judicial Code, as amended by the Act of February 25, 1919, which permits a judge, instead of resigning, to retire from regular active service.

Ever since his retirement as aforesaid the plaintiff has continued to perform the duties of a retired United States District Judge, in the manner provided by law, and has, as conditions have permitted and the business of the court demanded, performed judicial acts in that capacity.

At the date of the appointment of the plaintiff, the salary of a United States District Judge was fixed by law at the sum of $5,000 per annum, payable in monthly installments, and the rate of compensation of District Judges has been increased from time to time by act of congress, until at the date of plaintiff's retirement the salary of a United States District Judge was fixed by the Act of December 13, 1926, (chap. 6, sec. 1; 44 Stat. 919) at the rate of $10,000 per annum, at which rate it has since remained, except as hereinafter set forth.

That section 13 of the Independent Offices Appropriation Act, approved June 16, 1933, (Public Act No. 78) is as follows:

"For the period of the fiscal year ending June 30, 1933, remaining after the date of the enactment of this Act, and during the fiscal year ending June 30, 1934, the retired pay of judges (whose compensation, prior to retirement or resignation, could not, under the Constitution, have been diminished) is reduced by 15 per centum."

[fol. 3] That pursuant to the provisions of said act, for the period from June 15, 1933, to October 31, 1933, inclusive, the plaintiff has been paid by the defendant as salary as United States District Judge, retired, at a rate fifteen per cent. below that fixed by law at the date of his retirement, and there has been withheld from the plaintiff for the period mentioned out of his salary at the rate fixed by law at the date of his retirement the sum of $558.34. Plaintiff avers, deeming it his duty to maintain the independence of the judiciary and resist unconstitutional diminution of the compensation of Federal judges, he has protested to the Attorney General against said reduction by the disbursing officers of the Department of Justice, by whom judicial salaries are paid, and has been advised that the said Act of June 16, 1933, is binding upon the Department and must be complied with by its disbursing clerk, unless and until it is declared invalid by a court of competent jurisdiction. Plaintiff avers in his petition that the Act of June 16, 1933,

providing for reducing his compensation by fifteen per centum, is unconstitutional, null and void under the provisions of section 1 of article III of the Constitution of the United States, which provides that, "The Judges, both of the supreme and inferior Courts, shall, hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their continuance in Office."

Plaintiff is the owner of the claim of which there has been no assignment or transfer and has at all times borne true allegiance to the Government of the United States and has never in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, and is a citizen of the United States.

[fol. 4] To this petition the defendant has filed a demurrer, on the ground that the petition does not state a cause of action against the defendant.

The defendant, by the filing of this demurrer, admits the facts stated in the petition to be true, and upon the record before it the Court finds it necessary for a proper disposition of the case that certain constitutional questions should be determined. These constitutional questions are as follows:

QUESTIONS CERTIFIED

1. Does a United States District or Circuit Judge who, having served continuously for ten years and attained the age of seventy years, does not resign but retires under the provisions of section 260 of the Judicial Code, as amended, continue in office within the meaning of section 1 of article III of the Constitution which forbids diminution of the compensation of Judges during their continuance in office?

2. Where the salary of a United States District or Circuit Judge is increased by law after his appointment and he has subsequently retired in full compliance with the provisions of section 260 of the Judicial Code, as amended, is a reduction of his compensation as a retired Judge to an amount not below that fixed by law as his salary at the time of his appointment a diminution of his compensation within the meaning of section 1 of article III of the Constitution?

It is respectfully requested that the Supreme Court of the United States give appropriate instructions on the [fol. 5] above questions and certify and transmit and refer the same to the Court of Claims of the United States for its guidance in the further progress of the case.

Fenton W. Booth, Chief Justice. Wm. R. Green, Judge. Benjamin H. Littleton, Judge. T. S. Williams, Judge. Richard S. Whaley, Judge.

[fol. 6] EXHIBIT "A"

IN THE COURT OF CLAIMS OF THE UNITED STATES

No. 42541

CHARLES F. AMIDON

vs.

THE UNITED STATES

PETITION—Filed November 7, 1933

Plaintiff, Charles F. Amidon, respectfully states:

1. He is a citizen of the United States and a resident of Fargo, in the State of North Dakota.

2. Plaintiff was given by the President of the United States an ad interim appointment as Judge of the United States District Court for the District of North Dakota, on August 31, 1896, and thereafter was nominated, and by and with the advice and consent of the Senate of the United States, was appointed by the President of the United States on February 18, 1897, as Judge of the United States Dis-[fol. 7] trict Court for the District of North Dakota, and thereafter, on February 27, 1897, duly qualified, and ever since said date has been engaged in the performance of his duties as Judge of the United States District Court for the District of North Dakota.

3. Plaintiff attained the age of seventy years prior to June 1, 1928, and on or about June 2, 1928, signed and cause- to be delivered to the President of the United States

a written request for retirement, in which the plaintiff stated:

"I became seventy years of age on the 17th of August, 1926. I was appointed United States District Judge for the District of North Dakota by President Cleveland in 1896. Hence I am entitled to retire. I therefore hereby retire (not resign) under Section 260, as amended by Chapter 29 of the Laws of 1917-1919, (40 Stat. at Large, 1156)."

Under date of June 9, 1928, the President of the United States addressed to the plaintiff, and the plaintiff received a letter as follows:

"My Dear Judge Amidon: Permit me to acknowledge receipt of your letter of June 2nd, advising that it is your wish to retire from active service on the bench. In accordance with your request, and agreeably with the provisions of Section 375, Title 28, of the code of the laws of the United States (Judicial Code, Section 260, amended), I hereby approve your retirement, effective June 2, 1928.

I avail myself of the opportunity to congratulate you upon the faithful services which you have rendered the Government, and to wish for you a long future of health and happiness.

Very truly yours, Calvin Coolidge."

[fol. 8] 4. On June 2, 1928, the retirement of plaintiff as a United States District Judge became effective pursuant to his request as aforesaid. Since June 2, 1928, the plaintiff has continued to perform the duties of a retired United States District Judge in the manner provided by law, and has performed many judicial acts in his capacity as a retired judge of the United States District Court for the District of North Dakota.

5. At the date of the appointment of the plaintiff as a United States District Judge, the salary of United States District Judges was fixed by law at the sum of $5,000 per annum, payable in monthly installments, and said salaries were increased from time to time by Act of Congress, until at the date of plaintiff's retirement aforesaid the salary of a United States District Judge fixed by the Act of December 13, 1926, c. 6, Sec. 1; 44 Stat. 919 (U. S. Code, Title 28, Sec. 5) was at the rate of $10,000 per annum. Section 13

of the Independent Offices Appropriation Act, approved June 16, 1933 (Public Act No. 78), contains the following provision:

"For the period of the fiscal year ending June 30, 1933, remaining after the date of the enactment of this Act, and during the fiscal year ending June 30, 1934, the retired pay of judges (whose compensation, prior to retirement or resignation, could not, under the Constitution, have been diminished) is reduced by 15 per centum."

Pursuant to the provisions of said Act, and for the period from June 1, 1933, to and including October 31, 1933, the plaintiff has been paid by the defendant on account of his salary as United States District Judge, retired, the sum of $3,608.32, and no more, and by reason thereof there has been wrongfully withheld from the plaintiff for the period mentioned, the sum of $558.34.

[fol. 9] 6. Plaintiff has protested against the enforced reduction attempted as aforesaid, deeming it his duty to maintain the independence of the judiciary and resist unconstitutional diminuation of the compensation of Federal judges. On the tender to him of reduced compensation for the month of June, 1933, this plaintiff protested to the Attorney General of the United States against said reduction by the disbursing officers of the Department of Justice, by whom judicial salaries are paid, and thereupon received from the Department of Justice the following letter:

"July 15, 1933.

Hon. Charles F. Amidon, United States District Judge, Retired, Box 602, Westport, Connecticut.

My Dear Judge Amidon: The Department has received your letter of July 12th in reference to the reduction in your salary as provided by Section 13 of the Act of June 16, 1933. I appreciate the force of your suggestions, but there does not seem to be anything the Department can do about it. The disbursing clerk is required to comply with the law, unless and until it is declared invalid by a court of competent jurisdiction.

Sincerely yours, C. E. Stewart, Administrative Assistant."

The reduced compensation paid plaintiff as aforesaid has been received by him under protest and only as payment on account of the salary to which he is entitled by law.

7. Section 1 of Article III of the Constitution of the United States provides:

"The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the [fol. 10] Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office."

Notwithstanding his retirement, the plaintiff has continued to hold the office of United States District Judge, and the said Act of June 16, 1933, attempting to diminish his compensation during his continuance in office is a violation of said Section 1 of Article III of the Constitution, and is unconstitutional, null and void.

8. Plaintiff is informed that action similar to that taken in the plaintiff's case has been taken by the disbursing officers of the Department of Justice, in the cases of all retired Circuit and District Judges of the United States, and while reluctant to institute suit which may result in personal benefit to himself, he deems it his duty to maintain the constitutional independence of the judiciary, and to have the question as to the validity of said Act of June 16, 1933, judicially settled, and to remove the cloud created by said Act upon the judicial powers of retired judges.

9. Plaintiff further states that he is the legal owner of the claim for said compensation, and there has been no assignment of the whole or any part thereof, and that as far as he knows no action has been had thereon either in the Congress or in any of the Departments of the Government, except as stated in this petition; that he is justly entitled to the amount claimed, including all just credits and offsets; that he has at all times borne true faith and allegiance to the Government of the United States, and has not at any time voluntarily aided, abetted or given encouragement to rebellion against it.

[fol. 11] Wherefore the plaintiff prays judgment that he have and recover from the United States the sum of $558.34, and that he have such other relief as the nature of his case may require.

Charles F. Amidon, Plaintiff.

William D. Mitchell, John S. Flannery, Hibbs Bldg., Washington, D. C., Attorneys for Plaintiff.

STATE OF CONNECTICUT,
County of Fairfield, ss:

I, Charles F. Amidon, under oath, depose and say, that I have read the foregoing petition by me subscribed, and know the contents thereof; that the matters and things therein stated are positively true, and those stated on information and belief I believe to be true.

Charles F. Amidon.

Subscribed and sworn to before me this 3d day of November, 1933.

Charles C. Lunny, Notary Public, Fairfield County.
My Commission expires Feb. 1, 1934. (Seal.)

[fol. 12] CLERK'S CERTIFICATE

I, Willard L. Hart, Chief Clerk of the Court of Claims of the United States, do hereby certify that the foregoing certificate in the case of Charles F. Amidon v. The United States, No. 42541, was duly filed and entered of record in my office by order of said court, and as directed by said court, the said certificate is by me transmitted to the Supreme Court of the United States for its action thereon.

In testimony whereof, I hereunto subscribe my name and affix the seal of the Court of Claims of the United States, at my office in Washington, D. C., this 13th day of December, A. D., 1933.

Willard L. Hart, Chief Clerk, Court of Claims of the United States. (Seal Court of Claims.)

Endorsed on cover: File No. 38,260. Court of Claims. Term No. 657. Charles F. Amidon vs. The United States. Certificate. Filed December 14, 1933. File No. 657, O. T., 1933.